

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SUPERIOR PLUS REAL ESTATE  
GROUP, INC.,

Plaintiff,

v.

MARIA HERNANDEZ, ET AL.,

Defendants.

CASE NO. CV 16-906-SJO (PJWx)

~~[PROPOSED]~~ ORDER DENYING  
DEFENDANT'S MOTION TO PROCEED IN  
FORMA PAUPERIS AND REMANDING CASE  
TO SUPERIOR COURT

Before the Court is Defendant Cesar Navarro's motion to proceed *in forma pauperis* ("IFP"). For the following reasons, the motion is DENIED and the action is remanded to the Los Angeles County Superior Court.

On February 9, 2016, Defendant, proceeding *pro se*, lodged a Notice of Removal accompanied by a request to proceed IFP, seeking to remove this unlawful detainer action from state court. The Court has denied the IFP application under separate cover. To prevent this action from remaining in jurisdictional limbo, however, the Court also issues this Order, remanding the case back to the Superior Court.

Simply stated, because Plaintiff could not have brought this action in federal court in the first place, there is no basis to remove it. To the extent that Defendant is seeking to federalize the

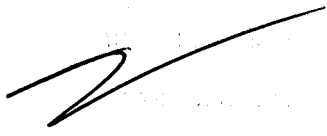
1 case by raising federal claims in his defense, he cannot do so. The  
 2 Court considers only the claims raised in the Complaint to determine  
 3 whether there is federal jurisdiction and does not take into account  
 4 any federal defenses or counterclaims Defendant raised (or could have  
 5 raised). *Phillips Petroleum Co. v. Texaco, Inc.*, 415 U.S. 125, 127  
 6 (1974) (explaining federal questions must be disclosed on the face of  
 7 the complaint as a defendant's reply is not a basis for federal  
 8 jurisdiction); *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241,  
 9 1244 (9th Cir. 2009) (explaining federal defense does not create  
 10 federal jurisdiction if the complaint on its face does not present  
 11 federal question).

12 Plaintiff's unlawful detainer action does not raise a federal  
 13 question. See 28 U.S.C. § 1331. Additionally, the amount in  
 14 controversy is less than \$10,000 and Plaintiff and Defendant are  
 15 California residents. See Civil Cover Sheet at 1; Exh. 1. Thus,  
 16 there is no diversity jurisdiction. See 28 U.S.C. § 1332. For these  
 17 reasons, the case is subject to remand. 28 U.S.C. § 1441(a); *Exxon*  
 18 *Mobil Corp v. Allapattah Svcs., Inc.*, 545 U.S. 546, 563 (2005).

19 Accordingly, IT IS ORDERED that: (1) this matter is REMANDED to  
 20 the Superior Court of California, 12720 Norwalk Blvd., Norwalk,  
 21 California, 90650, (2) the clerk shall send a certified copy of this  
 22 Order to the Superior Court and serve copies on the parties.

23 IT IS SO ORDERED.

24 DATED: 2/19/16, 2016

25   
 26 S. JAMES OTERO  
 UNITED STATES DISTRICT JUDGE

27 Presented by:

28   
 PATRICK J. WALSH  
 UNITED STATES MAGISTRATE JUDGE